

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MIGUEL ANGEL RAMIREZ,

Petitioner,

v.

JAMES DZURENDA, *et al.*,

Respondents.

Case No. 3:21-cv-00439-MMD-WGC

ORDER

This habeas matter is before the Court on *pro se* Petitioner Miguel Ramirez's application to proceed *in forma pauperis* ("IFP") (ECF No. 1) and his petition for writ of habeas corpus (ECF Nos. 1-1, 1-2 ("Petition")) for an initial review under the Rules Governing Section 2254 Cases.¹ For the reasons discussed below, the Court dismisses the Petition.

I. BACKGROUND

The Eighth Judicial District Court for Clark County ("state court") entered a judgment of conviction for conspiracy to commit sexual assault, kidnapping in the first degree, sexual assault, and open or gross lewdness and sentenced Ramirez to 81 years in the aggregate on June 1, 1987. *See State v. Miguel Ramirez*, Case No. 86C075318-2.² Ramirez represents that he was released on parole on October 25, 2010. (ECF No. 1-1 at 12.) A parole revocation hearing was held on November 3, 2015 and the Nevada Board of Parole Commissioners ("Parole Board") revoked Ramirez's parole. (*Id.*) Ramirez filed a state postconviction writ of habeas corpus and the state court denied Ramirez's postconviction

¹All references to a "Habeas Rule" or the "Habeas Rules" in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

²The Court takes judicial notice of the online docket records of the Eighth Judicial District Court and Nevada appellate courts. The docket records may be accessed by the public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 petition. Ramirez appealed and the Nevada Court of Appeals reversed and remanded,
2 finding that the state court improperly applied procedural bars and dismissed Ramirez's
3 petition without considering whether Ramirez was afforded due process protections
4 delineated in *Morrissey v. Brewer*, 408 U.S. 471 (1972).

5 Ramirez filed a supplemental state postconviction writ of habeas corpus and the
6 state court denied his supplemental petition. Ramirez appealed and the Nevada Court of
7 Appeals reversed and remanded to the state district court to grant the writ and order the
8 parole board to hold a new revocation hearing. In May 2020, the parole board held a
9 revocation hearing, and found Ramirez violated parole, and granted him credit for time
10 served. (ECF No. 1-1 at 14.) Ramirez appealed and the Nevada Court of Appeals
11 dismissed the appeal finding that no statute or court rule provides for an appeal from a
12 decision of the parole board and that the state district court did not preside over a parole
13 revocation proceeding or render a decision resolving a parole revocation matter. Ramirez
14 alleges in his Petition his detention from 2015 to January 2020 was unconstitutional and a
15 fundamental miscarriage of justice.

16 Ramirez provides that he was released from custody. An examination of the records
17 of the relevant state courts in this case and a search using the inmate locator tool on the
18 Nevada Department of Corrections' website³ verify that Ramirez is currently not in custody.

19 **II. IFP APPLICATION**

20 Under 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$5.00
21 filing fee is required to initiate a habeas action in a federal district court. The Court may
22 authorize a person to begin an action without prepaying fees and costs if the person
23 submits an IFP application on the approved form along with the appropriate supporting
24 documentation. See 28 U.S.C. § 1915(a); LSR 1-1, LSR 1-2. Although Ramirez submitted
25 the required form, Ramirez paid the filing fee on October 26, 2021. (ECF No. 3.) The Court
26 therefore denies his IFP application (ECF No. 1).

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³The inmate locator tool may be accessed online at: <https://ofdsearch.doc.nv.gov/>.

1 **III. DISCUSSION**

2 Under Habeas Rule 4, the assigned judge must examine the habeas petition and
3 order a response unless it “plainly appears” that petitioner is not entitled to relief. See
4 *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen
5 and dismiss petitions patently frivolous, vague, conclusory, palpably incredible, or
6 false. See *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases).
7 Courts may also dismiss claims at screening for procedural defects. See *Boyd v.*
8 *Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998).

9 The Petition fails to allege a cognizable federal habeas claim. The Antiterrorism and
10 Effective Death Penalty Act (“AEDPA”) “places limitations on a federal court’s power to
11 grant a state prisoner’s federal habeas petition.” *Hurles v. Ryan*, 752 F.3d 768, 777 (9th
12 Cir. 2014) (citing *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)). A state inmate is entitled
13 to federal habeas relief only if he or she is being held in custody in violation of the
14 Constitution, laws, or treaties of the United States. See 28 U.S.C. § 2254(a). “Thus, a
15 habeas corpus petition must allege a deprivation of one or more federal rights to present
16 a cognizable federal habeas corpus claim.” *Burkey v. Deeds*, 824 F. Supp. 190, 192 (D.
17 Nev. 1993). In narrow circumstances, a state law may create a constitutionally protected
18 liberty interest if the law (1) sets forth the substantive predicates to govern the official
19 decision-making and (2) contains explicitly mandatory language, *i.e.*, a specific directive
20 to the decision-maker that mandates a particular outcome when the substantive predicates
21 have been met. See, *e.g.*, *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 462 (1989).

22 Federal habeas relief is unavailable “for errors of state law.” *Lewis v. Jeffers*, 497
23 U.S. 764, 780 (1990). A state’s interpretation of its own laws or rules provides no basis for
24 federal habeas relief because no federal question arises. See *Estelle v. McGuire*, 502 U.S.
25 62, 67-68 (1991) (federal courts may not reexamine state court decisions on state
26 law issues). A petitioner “may not transform a state-law issue into a federal one merely by
27 asserting a violation of due process.” *Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1997).

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1 Although Ramirez mentions “due process,” “equal protection,” and “cruel and
2 unusual punishment” in the Petition, his claims present no federal question because they
3 plainly involve the application or interpretation of state law regarding his parole revocation
4 hearings. See *Swarthout v. Cooke*, 562 U.S. 216, 220-22 (2011) (noting that the Supreme
5 Court has “long recognized that a mere error of state law is not a denial of due process”).
6 Moreover, Nevada inmates possess no liberty interest in being released on parole. See
7 *Moor v. Palmer*, 603 F.3d 658, 662-63 (9th Cir. 2010). Ramirez’s claims are questions of
8 state law and therefore not cognizable in federal habeas corpus proceedings.

9 In addition, in order to obtain habeas relief under Section 2254, Ramirez must
10 demonstrate that he is “in custody.” 28 U.S.C. 2254(a). A federal district court may only
11 consider a habeas petition if the petitioner was in custody at the time of filing of the federal
12 petition. See *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (per curiam); *Bailey v. Hill*, 599
13 F.3d 976, 978-79 (9th Cir. 2010). The Court notes that Ramirez’s claims also appear non-
14 cognizable in federal habeas because success on the merits “would not necessarily lead
15 to immediate or speedier release.”⁴ See *Nettles v. Grounds*, 830 F.3d 922, 934-35 (9th
16 Cir. 2016). Accordingly, as Ramirez was not in custody when he filed his federal Petition
17 as contemplated by 28 U.S.C. § 2254, the Court lacks jurisdiction to grant him habeas
18 relief.

19 It is therefore ordered that this action is dismissed without prejudice.

20 It is further ordered that Petitioner Miguel Ramirez is denied a certificate of
21 appealability as jurists of reason would not find the dismissal of the petition to be debatable
22 or wrong.

23 It is further ordered that Ramirez’s application to proceed *in forma pauperis* (ECF
24 No. 1) is denied.

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27 ⁴A claim is cognizable under Section 2254 only if it falls within the “core” of habeas.
28 *Nettles v. Grounds*, 830 F.3d 922, 930 (9th Cir. 2016). If success on a habeas claim would
not necessarily lead to a petitioner’s immediate or earlier release from custody, the claim
does not fall within “the core of habeas corpus.” *Id.*

1 The Clerk of Court, pursuant to Rule 4 of the Rules Governing Section 2254 Cases,
2 is directed to make an informal electronic service upon Respondents by adding Nevada
3 Attorney General Aaron D. Ford as counsel for Respondents and directing a notice of
4 electronic filing of this order to his office. No response is required from Respondents other
5 than to respond to any orders of a reviewing court.

6 The Clerk of Court is further directed to enter a final judgment accordingly,
7 dismissing this action without prejudice, and close this case.

8 DATED THIS 30th Day of November 2021.

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12 MIRANDA M. DU
13 CHIEF UNITED STATES DISTRICT JUDGE
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